IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2157 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

MEHSANA DISTRICT CENTRAL COOP BANK LTD

Versus

K V TRIVEDI OR HIS SUCCESSOR IN OFFICE

Appearance:

MR SN SOPARKAR for Petitioner

MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE M.S.SHAH

Date of decision: 03/05/2000

ORAL JUDGEMENT

(per A.R. Dave, J.)

Rule. Learned advocate Mr. M.R. Bhatt waives service of rule for the respondent. At the request of the learned advocates, this petition is finally heard today.

2. The petitioner has challenged, by way of this writ petition, the action of the respondent in refusing stay against demand for assessment year 1997-98. It is the case of the petitioner that the petitioner is entitled to unconditional stay. In any case, it is submitted that for assessment year 1994-95 the assessment year 1996-97 the CIT (Appeals) has already taken a view substantially in favour of the petitioner following the decision of the Ahmedabad Bench of ITAT in Misc. Application in the case of Gujarat State Co-operative Bank Ltd. Therefore, stay of demand is required to be granted, insofar as demand in excess of taxes that may be payable if the said order of ITAT is followed in the case of the petitioner. The revenue, however, contends that in the facts and circumstances of the case, no stay is required to be granted.

3. We have heard Mr. S.N. Soparkar, learned advocate for the petitioner and Mr. B.B. Naik with learned advocate Mr. M.R. Bhatt for the revenue. In the facts and circumstances of the case, the ends of justice will be served if the following directions are issued:-

(A) Assessing Officer should determine the tax that may be payable by the petitioner for assessment year 1997-98, as if the order on Misc. Application of Ahmedabad Bench of ITAT in the case of Gujarat State Co-operative Bank Ltd. is followed.

(B) The petitioner shall be liable to make the payment of the said amount within a period of 15 days from the date of communication of the said order to it.

(C) According to Mr. Soparkar, the petitioner's appeal for assessment year 1996-97 has already been disposed of by CIT (Appeals) following the order of Ahmedabad Bench of ITAT in the above case and that according to the said order, the petitioner is entitled to substantial refund. The Assessing officer shall compute the said

refund if payable to the petitioner and should intimate to the petitioner the balance amount of taxes payable for assessment year 1997-98. In other words, the excess amount paid for assessment year 1996-97 should be adjusted against tax liability for assessment year 1997-98 and the difference, if any, would be paid as directed hereinabove.

(D) If the petitioner pays over the said amount, there shall be stay against recovery of further taxes till disposal of the appeal by CIT (Appeals) for the Assessment Year 1997-98.

4. These directions are issued without prejudice to the rights and contentions of both the parties and it is expressly made clear that no opinion is expressed by this court on the merits of the matter.

Rule is accordingly made absolute in the aforesaid terms with no order as to costs.

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